

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

THE BOEING COMPANY,  
Defendant.

THE BOEING COMPANY,

Counterclaimant,

v.

UNITED STATES OF AMERICA,  
Counterclaim-Defendant.

CASE NO. 2:22-cv-0485JLR

**JOINT ~~PROPOSED~~ SCHEDULING  
ORDER FOR PHASE I  
PROCEEDINGS**

NOTING DATE: SEPTEMBER 26, 2023

The United States and The Boeing Company (the “Parties”) jointly propose the following schedule for Phase I litigation. The Court issued an order on September 14, 2023 (ECF No. 66), that (1) clarified for the Parties that Phase I of litigation will include discovery regarding the United States’ liability and (2) instructed the Parties to propose a scheduling order

that is consistent with the United States' motion to phase (ECF No. 61). The dates in **Column A** below reflect the schedule the United States proposed in its motion to phase proceedings (including deadlines relating to the Government's costs that are now in Phase II pursuant to the Court's Orders) and is included here based on the September 14 order. The schedule in **Column B** below is the Parties' jointly proposed schedule for Phase I.

The Parties' proposed schedule adds a total of approximately six months before the Phase I trial would begin. About two months of that time is to avoid starting the trial during or shortly after the winter holidays and to accommodate scheduling conflicts, while the remainder is attributable to building in more time for discovery. The Parties agree this extra time is needed because the schedule the United States submitted with its motion to phase did not contemplate inclusion of Boeing's divisibility defense or the United States' liability in Phase I. With the inclusion of those issues, the Parties do not believe discovery can be completed in the time set forth in Column A. Discovery on the United States' liability and Boeing's divisibility defense is likely to require collection and review of documents spanning several decades that are maintained by multiple federal agencies, including electronic records and paper records stored in several federal repositories. Additional expert reports and depositions are also now likely during Phase I discovery. The Parties' proposed schedule in Column B, while still aggressive, allows time to accommodate completion of this additional discovery. The Parties respectfully request the Court to enter the schedule set forth in **Column B**.

<b>Column A</b>	<b>Column B Parties' Proposed Phase I Due Date</b>	<b>Event</b>
November 13, 2023	November 13, 2023	Motions seeking to join parties or amend pleadings are due.
November 13, 2023	Phase II	Government certifies administrative record of response action decision to


Column A	Column B Parties' Proposed Phase I Due Date	Event
		Court for review under CERCLA Section 113(j).
February 26, 2024	April 15, 2024	Parties must complete Phase I fact discovery.  All discovery shall be served sufficiently in advance to be completed by this date.
February 26, 2024	April 15, 2024	The identity of any Phase I expert who may testify at trial regarding issues on which the Party has the burden of persuasion must be disclosed.
March 7, 2024	May 16, 2024	Initial Phase I expert written reports completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served.
April 11, 2024	July 2, 2024	The identity of any experts who may testify in rebuttal to any initial Phase I expert must be disclosed.
April 16, 2024	July 12, 2024	Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served.
May 6, 2024	September 6, 2024	All Phase I expert discovery must be completed.
May 6, 2024	September 6, 2024	All non-dispositive motions, other than motions <i>in limine</i> are due.**
May 27, 2024	September 27, 2024	All dispositive motions are due.
July 1, 2024	October 31, 2024	Motions <i>in limine</i> are due.
August 5, 2024	February 1, 2025***	Final Pretrial Conference
September 9, 2024	March 17, 2025	Phase I trial ready.*

\*The Parties estimate that the Phase I trial will last 10 days.

\*\*\* The court notes that February 1, 2025 falls on a Saturday. Accordingly, the court modifies the Final Pretrial Conference date so that it falls on the following business day: February 3, 2025.

\*\* Any challenge to the adequacy of the Navy's response action decision under CERCLA Section 113(j), included in the Government's proposed schedule, is now a Phase 2 issue under the Court's Orders.

**IT IS SO ORDERED**, on this 27th day of September 2023, that the Parties shall comply with the schedule in **Column B** above.

  
United States District Judge

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